INTRODUCTION OF A REVISION TO THE STRUCTURED SETTLEMENT PROTECTION ACT

HON. E. CLAY SHAW, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 6, 2000

Mr. SHAW. Mr. Speaker, today I introduce a revised version of the Structured Settlement Protection Act, which I had introduced earlier in this Congress along with my colleague Mr. STARK and a broad bipartisan group of cosponsors constituting a majority of the Ways and Means Committee. The revised legislation I am introducing today, again joined by Mr. STARK, will bring a final resolution to the issue known as ''factoring'' of structured settlement payments.

I am a long-time supporter of the use of structured settlements to compensate victims of physical injuries. Structured settlements constitute a private sector funding alternative to taxpayer-financed programs to meet the ongoing, long-term medical and living needs of seriously-injured victims and their families. Structured settlements enable these injured people to live with dignity, free of reliance on government. For these reasons, Congress adopted special tax rules to encourage the use of structured settlements to provide long-term financial security to injured victims and their families.

The legislation I am introducing today addresses concerns that have been raised over the ''factoring'' of structured settlement payments, in which the structured settlement recipient sells future payments for cash. The legislation protects the Congressional policy underlying structured settlements by providing that a stiff excise tax would be imposed on a factoring transaction unless a State court approves the transaction in advance upon a finding that the factoring transaction is in the best interests of the victim, taking into account the welfare and support of the victim's dependents, and a further finding that the transaction does not contravene applicable statutes and court orders.

This legislation has been agreed to by the National Structured Settlements Trade Association (NSSTA) on behalf of the structured settlement industry and the National Association of Settlement Purchasers (NASP) on behalf of the factoring industry. I submit for the record a joint letter of support for this legislation from NSSTA and NASP.

An identical structured settlement protection provision has been included in S. 3152, the ''Community Renewal and New Markets Act of 2000'', introduced on October 3 by Senate Finance Committee Chairman ROTH and cosponsored by a bipartisan group of 15 Members of the Senate Finance Committee. The structured settlement protection provision in Chairman ROTH's package has been scored as essentially revenue neutral.

Enactment of this legislation—which is part of an overall package of Federal and State legislation which has been agreed to by the two sides in the debate—will bring a final resolution to all of the issues surrounding structured settlement factoring. I strongly urge the enactment of this important legislation as soon as possible.

Re Agreement between the National Structured Settlements Trade Association and the National Association of Settlement Purchasers on Proposed Legislation Covering Transfers of Structured Settlement Payments.

SEPTEMBER 13, 2000.

Hon. BILL ARCHER,
Chairman, Committee on Ways and Means, House of Representatives, Washington, DC.
Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Finance, U.S. Senate, Washington, DC.

DEAR MESSRS. CHAIRMEN: The National Structured Settlements Trade Association (NSSTA) and the National Association of Settlement Purchasers (NASP) have agreed on the concepts and language of the attached package of Federal and State legislation that would protect the Congressional policy underlying structured settlements and would regulate transfers of structured settlement payments to companies in the business of acquiring future structured settlement payments from recipients in exchange for a lump sum. These transfers are sometimes referred to as structured settlement ''factoring'' transactions.

The Federal and State measures are each necessary components of a single legislative package. (Legislative language for the Federal and State measures is attached.) Under the agreed approach, the States are given the consumer protection role. The proposed State legislation provides for court review of all proposed factoring transactions to ensure that a proposed transaction is appropriate under the circumstances. Specifically, in order for the transaction to proceed, the reviewing court must find that the transaction is in the best interest of the payee, taking into account the welfare and support of the payee's dependents, and that the transaction does not contravene other applicable statutes and court orders.

The Federal measure protects the Congressional policy underlying structured settlements by providing that a stiff excise tax would be imposed unless the requisite State court approval is obtained under a State structured settlement protection statute requiring findings that a transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents, and that the transfer does not contravene applicable statutes and court orders. The Federal measure would also assure that the parties to a structured settlement are not subject to adverse tax treatment in the event of a later transfer of payments under that settlement.

The Federal measure is similar to H.R. 263, sponsored by Reps. Clay Shaw (R–FL) and Pete Stark (D–CA) and co-sponsored by a broad bipartisan majority of the House Ways and Means Committee, and S. 1045, sponsored by Sens. Max Baucus (D–MT) and the late Sen. John Chafee (R–RI) and co-sponsored by a total of 6 Members of the Senate Finance Committee.

The State measure is complementary to the Federal measure. The State measure lays out the process for court approval of proposed transfers of structured settlement payments, including required disclosures to the payee and protections for the other parties to the structured settlement. Legislation similar to the State measure has been enacted in 16 States, and the National Conference of Insurance Legislators (NCOIL) has recently adopted a Model Structured Settlement Transfers Protection Act that closely resembles the State measure. The prospect of the Federal excise tax—which (following a transition period) would be payable by the company acquiring the payments from the structured settlement recipient in any transfer that has not received State court approval—will provide important impetus for enactment of the necessary State legislation in the remaining States (and enactment of conforming changes in States that have already enacted legislation) and for compliance with the State regulatory regime in light of the multi-state nature of structured settlement payment transfers.

Federal tax legislation that addresses only the issue of tax certainty for the parties to the structured settlement would be detrimental to our common objective of reaching a final legislative resolution of all of the issues surrounding transfers of structured settlement payments. Accordingly NSSTA and NASP would oppose the enactment of Federal tax legislation in this Congress which addresses only the tax certainty issue.

NSSTA and NASP respectfully request that you work with Reps. Shaw and Stark, Sens. Baucus and Grassley, and other members of the Ways and Means and Finance Committees to enact the attached Federal measure this year in order to achieve a final resolution of the issues surrounding transfers of structured settlement payments.

Sincerely,

National Association of Settlement Purchasers on behalf of its members, Singer Asset Finance Company L.L.C., Settlement Capital Corporation, J.G. Wentworth S.S.C., L.P., Settlement Funding LLC, d/b/a Peachtree Settlement Funding, Stone Street Capital, Inc., and other NASP members.

National Structured Settlements Trade Association, on behalf of its members.

The undersigned settlement purchasers, although not members of NASP, hereby confirm that they concur in and agree to comply with and support the undertakings made by NASP in the foregoing letter:

Metropolitan Mortgage and Securities Co. Inc.

JOHN E. CHAPOTON,
Vinson & Elkins L.L.P., representing NASP.
JOHN S. STANTON,
NANCY GRANESE,
Hogan & Hartson L.L.P., representing NSSTA.

HONORING ISABELLA ''BELLE'' CUMMINS

HON. GEORGE W. GEKAS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 6, 2000

Mr. GEKAS. Mr. Speaker, I rise today at the close of the 106th Congress to remember an outstanding individual who was a native of my own state of Pennsylvania and a friend to me and many of my colleagues, Isabella ''Belle'' Cummins. Belle tragically passed away in May of this year.

Belle was a familiar sight around the halls of the Capitol, where she served as staff counsel to the House Judiciary Committee from 1987 to 1991. During this time she was instrumental in gaining the passage of a national apology to Japanese-Americans for their internment during World War II. In 1991, Belle joined with former Representative Peter Kyros to establish the firm of Kyros and Cummins, where she promoted biomedical research causes until her untimely passing. She was an expert on administrative law, social security, and tort reform as well.

A decade ago, Belle played an instrumental part in developing the Congressional Biomedical Research Caucus, of which I am a Co-Chairman. This year the Caucus celebrates its tenth anniversary. Without the extraordinary efforts of Belle Cummins ten years ago and throughout the past decade, the Caucus would not have achieved the tremendous level of success that it garners today. With Belle's great assistance the bipartisan Caucus has grown to almost one hundred Members. The goals of the Caucus coincide with those Belle championed herself increasing funding for the National Institutes of Health and developing new and improved methods in biomedical research. Tragically, before science could repay with a cure its debt to her for her fantastic efforts in the field of biomedical research, Belle succumbed to cancer only one month after her diagnosis.

Belle had an upbeat attitude and positive outlook that could not be diminished. Belle was well-loved and well-respected by Members and staff alike on both sides of the aisle. Belle's reputation preceeded her, as she was often able to gain meetings with Members of the House or Senate when others could not. Perhaps no greater testimony to the impact Belle Cummins had on all of those who were privileged to know her could be found at a memorial held in her honor by family and friends in the Rayburn building last June. Countless friends and family attended to remember Belle, and many Members of Congress, staff, friends, and relatives shared their memories of her as a driven and determined, yet kind, generous, and positive individual.

Words cannot adequately express my extreme gratitude to Belle not only for her enormous efforts on legislative interests we shared, but for her friendship that spanned more than a decade. With Belle's passing, all of Congress suffers a great loss. My dear friend Belle Cummins is, and will be, greatly missed.

SUPPORTING SERBIAN PEOPLE

HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 6, 2000

Mr. PAYNE. Mr. Speaker, I rise in support of the Serbian people. The Serbian people won a great victory yesterday in the streets of Belgrade. They vindicated their choice for democracy and freedom that they exercised in the presidential elections of September 24. I congratulate the democratically elected President Vojislav Kustinca and the brave people of Yugoslavia who refused to allow their victory to be stolen from them.

It is now time for the West to welcome Yugoslavia into the family of free nations and to assist its new President to rebuild the country from the ravages of war.

TAIWAN'S NATIONAL DAY

HON. DANA ROHRABACHER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 6, 2000

Mr. ROHRABACHER. Mr. Speaker, I extend congratulations to the 23 million people of Taiwan and their democratically elected government, led by President Chen Shui-bian and Vice-President Annette Lu, on the occasion of Taiwan's forthcoming National Day.

Taiwan has become a beacon of democracy in the Asia-Pacific region, despite the threat of military force by Communist China. I have seen tremendous positive changes in Taiwan, from my first visit in 1967, when the island republic was under virtual martial law. Within the past three decades, as basic freedoms and civil liberties have become ingrained, Taiwan has evolved into a powerful economic engine for the entire region. Today the people of Taiwan are enjoying unprecedented prosperity and deserve international respect and admiration.

I have strongly supported Congressional resolutions advocating that Taiwan be permitted as an independent entity into international organizations, such as the World Health Organization and the World Trade Organization even before Communist China is admitted.

The government of communist China should never forget the importance of the freedom of Taiwan to the people of the United States. I wish even greater social and economic success for Taiwan in the coming years.

THE SOUTHEAST EUROPE TRADE PREFERENCE ACT

HON. AMO HOUGHTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 6, 2000

Mr. HOUGHTON. Mr. Speaker, today I've introduced the Southeast Europe Trade Preference Act (SETPA), a modest yet important bill that was originally introduced in the Senate by the Senior Senator from New York. This bill is designed to promote meaningful economic development and stability in Southeast Europe through additional trade benefits targeted to certain countries in Southeast Europe.

The bill, modeled on the recently passed Caribbean Basin Initiative, with some key changes. The bill authorizes the President to proclaim duty-free treatment for all eligible articles from the following countries, subject to specified conditions: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Former Yugoslav Republic of Macedonia, Romania, Slovenia, Kosovo, and Montenegro.

Mr. Speaker, this is a timely piece of legislation, especially when considering the changes occurring right now in the Federal Republic of Yugoslavia (FRY). As you know, following the recent elections and yesterday's uprising in Belgrade, Vojislav Kostunica is the president-elect of Yugoslavia and international war criminal Slobodan Milosevic has apparently been ousted. This is terrific news for the region, and the world.

The SETPA would extend duty-free treatment to products that are currently not eligible under the GSP program, including certain iron and steel products, certain agricultural products, footwear, glassware, ceramics, automobiles, bicycles, clocks and watches. The only product that would not receive additional coverage is textiles, in order to protect that fragile industry here in the United States.

It is important to note that the bill contains common sense protections for U.S. industries such as a provision that prohibits the President from designating any country a beneficiary country of the bill if that country has seized ownership of any property owned by a U.S. citizen or corporation, or has taken steps to do so.

That important provision can be waived if the President reports to Congress that compensation has been or is being made to the owner, or good-faith negotiations to provide such compensation are in progress. If the country is otherwise taking steps to discharge its obligations under international law; or a dispute over compensation for such a seizure has been submitted to arbitration under the Convention for the Settlement of Investment Disputes, the provision may also be waived.

Other grounds which could disqualify a country for designation as a beneficiary include a failure to recognize or enforce arbitral awards in favor of U.S. owners, the preferential treatment to the products of a developed country other than the United States, with significant adverse effect on U.S. commerce, the broadcast of copyrighted material belonging to U.S. copyright owners by a government-owned entity without the owners' express consent, or the absence of a treaty or other agreement regarding the extradition of U.S. citizens. Failure to take steps to afford workers in the country certain internationally recognized worker rights will also disqualify a country, as does membership in the European Union.

The President is, of course, able to waive these prohibitions should he report reasons for doing so to Congress, except in the case of membership in the European Union.

Importantly, the bill sets specific conditions for the beneficiary designation of the Federal Republic of Yugoslavia (FRY). With the sweeping changes now occurring in that nation, we want to be certain that the Administration is free to act accordingly should the FRY take the steps necessary for beneficiary designation.

A number of reports are necessary, and thus would be required after passage of the SETPA, to be sure that the bill does no harm to the United States. Section 8 of the bill requires the U.S. International Trade Commission to report to Congress and the President on the economic impact of this Act on U.S. industries and consumers, and Section 9 directs the Secretary of Labor to review, analyze, and report to Congress on this Act's impact on U.S. labor, as well as developments in labor conditions in the beneficiary countries.

Finally, Mr. Speaker, I would just like to say that this bill is good for the people of Southeast Europe, and good for the people of the United States. It will promote economic and political security in this important area of the world following the recent devastating conflicts of the area, and will enhance the economic and national security interests of the United States in Europe. I know that it's late in the session—really too late to consider the bill this year—but I would hope that we can take this bill up at the earliest possible opportunity in the 107th Congress.